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Crimal Law Policy Formulation Asset Deprivation of Crimal Action Results

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Abstrak: Karakteristik kejahatan pada era ini ditandai dengan semakin pendeknya jarak tempuh kejahatan sehingga mempengaruhi lokus dan tempus kejahatan, perubahan modus operandi yang *sotisficated* sehingga mempercepat arus informasi dan komunikasi kejahatan serta peredaran uang hasil kejahatan yang tidak terlacak melalui system perbankan. Menilik pada hasil publikasi statistik kriminal terlihat jelas anatomi kejahatan di Indonesia, walau masih didominasi oleh kejahatan konvensional namun data menunjukan kerugian terbesar dikontribusi dari kejahatan berdemensi baru, seperti narkotika, tindak pidana pencucian uang, perdagangan manusia dan korupsi. Ancaman, potensi dan kerugian yang ditimbulkan dari kejahatan inilah yang mengusung ide formulasi kebijakan Hukum pidana perampasan aset hasil tindak pidana. Argumentasi teoritik, social dan yuridis atas fenomena hasil kejahatan yang sulit dirampas dalam sistem peradilan melalui pemidanaan, memberikan sebuah akses kebijakan untuk merampas aset di luar pemidanaan.Adapun urgensi penting dikedepannya formulasi kebijakan perampasan aset hasi kejahatan didasari oleh adanya beberapa pertimbangan, antara lain yaitu adanya perkembangan masif kejahatan yang mengiringi pertumbuhan industri, bisnis, perdagangan dan keuangan global, adanya beberapa tindak pidana yang tercatat paling banyak menimbulkan kerugian tapi sulit dirampas hasil kejahatannya, perampasan aset di dalam sistem hukum Indonesia dapat dilakukan setelah proses penegakan hukum memperoleh putusan pengadilan yang berkekuatan tetap, yang memerlukan waktu lama sehingga peluang ini dapat dimanfaat oleh pelaku tindak pidana untuk menyembunyikan atau membawa aset ke luar negara sehingga tidak terlacak dan Indonesia sudah meratifikasi Konvensi Perserikatan Bangsa-Bangsa (PBB) menentang korupsi tahun 2003 dan pemberantasan tindak pidana pencucian yang menggariskan pentingnya perampasan aset tanpa pemidaan. Kebijakan hukum pidana perampasan aset dapat dilakukan dengan menggunakan konsep kebijakan formulasi hukum pidana baik melalui jalur peradilan pidana maupun diluar mekanisme peradilan pidana. Karenanya penting membangun sebuah kerangka kebijakan dalam format substansi sebagai dasar pijakan norma perampasan aset dan dasar tindakan aparat, struktur sebagai wilayah kewenangan institusi dalam penegakan perampasan aset, serta menjunjung hak asasi manusia.

Kata Kunci : *Formulasi Kebijakan, Hukum Pidana, Perampasan Aset, Tindak Pidana.*

Abstact: In this era the characteristics of crime are marked by the shorter mileage of crime that affects the *locus* and *tempus* of crime, changes on sophisticated modus crime that made an accelerates the flow of information and communication of crime and the circulation of money from proceeds of crime that are not tracked through the banking system. The results of Criminal Statistics Publications, the anatomy of crime is clearly visible in Indonesia, although it is still dominated by conventional crime, the data shows that the biggest losses are contributed by new-dimensional crimes, such as narcotics, money laundering, human trafficking and corruption. It is this threat, potential and loss arising from crime that carries the idea of the Formulation of Criminal Law Policy on the Seizure Asset of Criminal Asset Outcome. Theoretical, social and juridical arguments for the phenomenon of proceeds of crime that are difficult to seize in the justice system through criminalization, provide an access to policies to seize assets outside of law criminalization. The important urgency for the future is the formulation of policies on the seizure of assets resulting from crime based on the existence of several considerations, including the massive development of crime that accompanies the growth of industry, business,

[1] Sri Ismawati and Slamet Rahardjo. Pontianak, Tanjungpura University. In the framework of the National Conference on Criminal Law. Palembang, Sriwijaya University, October 30 - 31 2019.

trade and global finance, the existence of several criminal acts which recorded the most causing losses but difficult to be deprived of the results of the crime, confiscation of assets in the Indonesian legal system can be done after the law enforcement process obtains a court decision that has a permanent power, which requires a long time so that this opportunity can be utilized by the perpetrators of crime to hide or bring assets outside the State so that it is not tracked and Indonesia has ratified the convention The United Nations Against Corruption in 2003 and the eradication of the crime of laundering which outlines the importance of confiscation of assets without conviction. The criminal law policy of appropriation of assets can be carried out by using the concept of a criminal law formulation policy either through criminal justice channels or outside the criminal justice mechanism. Therefore it is important to build a policy framework in the format of substance as the basis for norms of appropriation of assets and the basist of leggal officer in actions, structure as an area of institutional authority in enforcing the appropriation of assets, and upholding human rights.
Keywords: *Policy Formulation, Criminal Law, Asset Deprivation, Criminal Acts*

A. Introduction

Today shows the development of crime characteristics that are different from previous crimes, better known as conventional crime. Theoretically it is said that crime develops and has character in accordance with the dynamics of society, because society is a place that produces crime. Today's crime enters a new dimension where technology plays a big role so that crime activities become so complicated. Conventional crime is packaged in a new form, and new crimes are emerging along with the development of science and the use of misused technology.

The impact of world globalization is increasingly clarifying the character of this new dimension of crime as said by Kenichi Ohmae[2] that it is as if the world is without borders and becomes so transparent. What happens in other countries or in other parts of the world is known very quickly elsewhere. Although Kenichi Ohmae emphasizes the development and strength of the global economy, its effects cannot be avoided by other fields of life. Countries in the world grow into global society and forming universal values which later became the barometer into civilizations of the nations on the world such as democratization, human rights, the environment and global markets. Globalization has significantly changed the constellation of the world in various lives, starting with economic change with the mascot of economic imperialism by a number of countries in control of the world economy.

Along with that time, crime also develops in tandem with the development and dynamization of society. In other words, crime moves in accordance with the characteristics of the development of society, so that if the current development of the world community with the supranational economic power icon has been dominated by technology in the digital

[2] Kenichi Ohmae in his book "The borderless world", a world without borders writes about the strengths and strategies in the interconnected world economy. According to him there are five decisive factors that have an impact on the global economy which he calls 5C, namely C; Customers, Competition as the power of technology deployment, Companies, Currency, Country.

era, then crime also relies on economic power and utilizes technology. International and / or transnational crimes seem to make technology as blood to infiltrate all the anatomical holes of world community life and build networks like official organizations so that they reap many financial and social benefits. Seeing the enormous potential threats and losses arising from crime in this era, United Nation considers it necessary to urge the countries of the world to jointly build a State alliance to stem the development of international crime. United Nation itself has determined 6 (six) threats and challenges that need to be watched out, namely social and economic threats, including poverty, infectious diseases and environmental damage; threat of conflict between States; the threat of internal conflict, including civil war, genocide, and large-scale crime; the threat of nuclear, radiological, chemical and biological weapons; and the threat of terrorism and the threat of organized transboundary crime.

In this era, crimes have a modus operational that is sophisticated so as to speed up the flow of crime information and communication as well as the circulation of money resulting from crime that is not tracked through the banking system. In this context includes various acts of fraud committed by financial and banking officials who collaborate in this new dimension of crime. United Nation has provided recommendations and pointed to several forms of transnational crime as a new dimension of crime, as stated in the 2000 Palermo Convention[3], which is needs to be carefully monitored and followed up in the prevention and enforcement of the law, namely corruption, money laundering, trafficking in persons, especially women and children, people and weapons smuggling.

Indonesia as part of the world community and which has ratified the Palermo convention, has the responsibility also independently with other world communities to undertake efforts together on tackle the crime. This is because Indonesia also feels the impact of world globalization, especially as a place or target of international crime with a new dimension. Indonesia's criminal politics must be structured not only in order to synergize with efforts to prevent and eradicate the world community, especially the United Nations, but also the stability of social security, economic culture of Indonesia is maintained and minimizes from the losses arising by this new dimension of crime.

[3] Indonesia has ratified the United Nations Convention Against Organized Crime (United Nations Convention Against Transnational Crime 2001 through Law Number 5 of 2009.

From the results of the 2014[4] Criminal Statistics Publication, issued by the Central Statistics Agency, the anatomy of crime in Indonesia is clearly visible, which is still dominated by conventional crime. During the period 2011-2013, the number of crime incidents or criminal acts in Indonesia fluctuated. records in the Operations Control Bureau, Police Headquarters showed the number of crime (total crime) in 2011 as many as 347,605 cases, decreased to as many as 341,159 cases in 2012 and again increased in 2013 to 342,084 cases. Other crime indicators during this period also showed a similar pattern of development. Meanwhile, that for other types of crimes such as narcotics / psychotropic crimes, fraud, embezzlement, as well as domestic violence during the period 2011 to 2013 occurred in the Greater Jakarta Metropolitan Area

The conventional crime data above is even more prominent in quantity but if it is calculated, it is predicted to be lower, both in quality and the amount of losses arising from new-dimensional crimes, such as narcotics, money laundering, human trafficking and corruption.

Losses for money laundering for example, even though it cannot be known with certainty, but the amount of the loss is very large. Such is the value of money involved in money laundering, so according to its value money laundering is the third largest industry in the world. The most recent estimates suggest that money laundering activities around the world reach around US $ 1 trillion every year. Former IMF Managing Director Michel Camdessus, estimates the volume of cross border money laundering is between 2 and 5% of the world's gross domestic product (GDP). Even the lowest limit of the range, namely the amount generated from narcotics trafficking, arms trafficking, bank fraud, securities fraud, counterfeiting and similar crimes[5].

In corruption, the Indonesia Corruption Watch (ICW) said that the total loss of state finances due to criminal acts of corruption throughout 2015 reached Rp31,077 trillion[6].

[4] Central Statistics Agency. 2014. Criminal Statistics Publication BPS. Jakarta : Indonesia Central Statistics Agency. Page.20. This crime data only covers all criminal events or incidents reported by the public, or criminal acts where the perpetrators are caught red-handed by the police. Given the high reluctance of the public to report, it is suspected that the data produced tends to be under-estimated. That is, the actual crime incidence is allegedly greater than reported. In other words, the dark number of crimes is still relatively large.

[5] *Kerugian Negara Akibat Pencucian Uang*, http://www.interpol.go.id/id/kejahatan-transnasional/pencucian-uang/97-kerugian-negara-akibat-pencucian-uang accessed on Wednesday 2 January 2013.

[6] Dwi A., Dyah. ICW : Korupsi 2015 Rugikan Negara Rp 31077 Trilyun, http://www.antaranews.com/berita/546929/icw-korupsi-2015-rugikan-negara-rp31077-triliun accessed on Wednesday 24 February 2016.

According to Indonesian Corruption Watch data in the period of 2014 the state money that had been saved by the Corruption Eradication Commission (KPK) reached Rp 2.8 trillion. This figure far surpasses that saved by the Indonesian Police which is only Rp. 67.7 billion and the Attorney General's Office at Rp. 792 billion[7].

Other data shows that the value of the state's financial losses from corruption that was saved during the period of 5 (five) years, 2010-2012 did not reach 50% of the total state losses, namely: 19.50%, from IDR 180,309,318,403.96, and 20.28% of US $ D 37,261,549.65. The data does not include the ICW report on the value of state financial losses from natural resource management, namely due to illegal logging in the amount of Rp. 169.7 trillion and illegal fishing in the amount of Rp. 300 trillion[8].

Reflecting on the losses incurred from the above crime, it seems clear that in corruption crimes, for example, the state money that can be saved can be higher than the recorded data. However, because the nature of this crime is so complicated, involving networks, storing assets outside national borders - crossing national borders by utilizing advances and developments in technology and information, law enforcement faces more obstacles. Not to mention the support of human resources who master technology becomes one of the obstacles for the disclosure of crime and at the same time saving the country's assets.

The United Nations has established a number of conventions that contain provisions regarding asset recovery and mutual legal assistance in the context of confiscation and seizure of results and instruments of criminal offenses. These conventions include the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Phychotropic Substances (1988), the United Nations Convention on Transnational Organized Crime / UNTOC (2002), the UN Counter Terrorism Conventions and the United Nations Convention Against Corruption / UNCAC (2003). Article 53 UNCAC is designed to ensure that each State Party recognizes that the other State Party has the same legal standing in carrying out civil actions and other direct means to recover property (assets) illegally obtained and taken abroad. The United Nations recommends a Non-Conviction Based Asset Forfeiture (NCB) asset return model. NCB is used if criminal proceedings that are followed by confiscation of assets (confiscation) cannot be carried out, which can be caused by several things, including: (i) the

[7] ICW KPK Lebih Banyak Selamatkan Uang Negara Ketimbang Polri dan Kejaksaan, https://news.detik.com/berita/2835667/icw-kpk-lebih-banyak-selamatkan-uang-negara-ketimbang-polri-dan-kejaksaan accessed on 7 Oktober 2019.

[8] Yusuf M. dan Sambutan Jaksa Agung dalam Romli Atmasasmita. (2014). Hukum Kejahatan Bisnis, Teori dan Praktik di Era Globalisasi. Jakarta : Prenadamedia Group, h. 20.

owner of the asset has died; (ii) the termination of the criminal process because the defendant is free; (iii) criminal prosecution took place and was successful but the acquisition of assets was unsuccessful; (iv) the defendant is not within the jurisdiction's limit, the name of the owner of the asset is unknown; and (v) there is not enough evidence to initiate a criminal suit. Currently Indonesia has adopted a policy to formulate regulations as the legal basis for seizure of Aseet, as a consequence of the ratification of the United Nations Convention on Combating Funding for Terrorism and the Convention Against Corruption. This convention regulates provisions relating to efforts to identify, detect and freeze and seize results and instruments of criminal offenses[9].

The return of assets resulting from crime, is currently one of the government's targets or targets to take back all state rights that can be valued in money and everything in the form of money or goods owned by other parties due to crime. The crime of money laundering and corruption is one of the crimes that cause huge losses, so the State needs to take steps to recover the assets of the State and reuse them for development purposes. The seizure of assets in corruption, for example, still leaves problems and obstacles, not only because the said assets are predicted to have been taken outside of Indonesia, but also related to legal instruments or laws, human resources who have competence in tracking and confiscation, to international cooperation with the countries where the assets are invested.

As a signatory of the convention, Indonesia has the obligation and responsibility to adjust the provisions of existing national laws or those to be formulated, with the said convention. At present the Indonesian government has adopted a policy to formulate arrangements regarding the seizure of assets of criminal offenses. Apart from the pros and cons of the public over the drafting of a law on the appropriation of assets, this paper is oriented to review and analyze the urgency and formulation of the criminal law policy on appropriation of assets in criminal acts in Indonesia.

Based on the background description regarding the formulation policy of appropriation into assets in the criminal act above, it is necessary to examine the urgency of formulating a criminal law policy on the confiscation of assets resulting from criminal acts and how to formulate the appropriation of assets of criminal offenses in accordance with Human Rights and the purpose of punishment in Indonesia?

[9] Naskah Akademis Rancangan Undang-Undang Perampasan Aset, h. 7.

B. Method

This research with the title Criminal Law Policy Formulation Asset Deprivation Of Criminal Action Results was designed using the normative juridical approach method. Research with a normative juridical approach is carried out by examining library materials or secondary data, which can be called normative legal research, or library law research[10].

Given the characteristics of this study, this method is appropriate to use so that the scope and objectives of the study are directed and / or through the following steps: 1) Inventory of laws and regulations; terminology about assets, confiscation of assets, assets, proceeds of crime, formulation of criminal law policies, human rights and criminal offenses; 2) Inventorying and identifying the opinion of legal experts, explaining the relationship, finding, analyzing to constructing thinking about the seizure of assets of a criminal offense. 3) This research step starts through positive law inventory activities, research of legal principles and in-concreto legal research. 4) Concrete legal research is carried out through observing criminal cases both related to material criminal law, formal criminal law and criminal law.

The data analysis method used by descriptive qualitative analytical that is describing research findings based on the interpretation, interpretation and analysis of researchers as outlined in the form of narration.

Primary data collection is carried out through library research and document studies, by examining the legislation, legal science literature and other literature related to the problem under study, and collecting tertiary legal materials, including legal dictionaries, language dictionaries that can clarify the terms used in writing this research.

This research using normative approach is also supported by data that taken in the field as supporting data. Supporting data is useful to get input and opinions from academics and legal practitioners, especially those relating to the first, the thought of the urgency of the formulation of a criminal law policy on appropriation of assets in a criminal act viewed from the perspective of human rights and the purpose of punishment in Indonesia; The second relates to the description of the formulation of deprivation of assets of criminal offenses that are in accordance with Human Rights and the purpose of punishment in Indonesia.

[10] Soerjono, Soekanto dan Sri Mamudji. (2003). *Penelitian Hukum Normatif.* Jakarta : Raja Grafindo. h.14.

C. 1. Terminology of Deprivation of Assets resulting from Criminal Acts and Criminal Law Formulation

Terminology is an understanding that can indicate the limits and or scope of a material or variable referred into a study or research. Terminology is also a domain that can be used as a frame work to focus the study on its components. An understanding of the assets of a criminal offense and the appropriation of assets becomes important in order to provide a framework that gives birth to the rights, obligations, duties and authority of the institution that is given the authority for that. This competency arrangement can be seen in the regulation of Article 1 of the General Provisions of the draft law concerning the seizure of assets of a criminal offense.

Article 1 The draft law on the confiscation of assets limits the notion of the deprivation of assets as a crime, hereinafter referred to as seizure of assets as a forced attempt by the state to seize the assets of a criminal act based on a court decision without being based on the punishment of the perpetrators. This terminology shows an area or domain for law enforcement in seizing assets of a crime, which can be done outside of punishment. Arrangements like this are things that are outside the previous policy or in general criminal acts where the State's forced action on the assets of the accused or convicted person becomes the domain of punishment.

As for the types of assets of criminal acts that can be confiscated are given an understanding and are limited to: a) Assets obtained or thought to originate from criminal offenses; or b) Unnatural wealth that is equated with a Criminal Asset.

This terminology corresponds to the understanding in article 2 of the United Nations Convention Against Transnational Organized Crime 2000 which regulates Proceeds of crime. The proceeds of crime are defined as assets that are directly or indirectly obtained from a crime (proceeds of crime shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence). While property constraints are defined as all movable or immovable objects, both tangible and intangible (property shall mean assets of every kind, wheter corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instrument evidencing title to, or interest in, such assets).

Limitation of the material scope of the seizure of assets as is known from the formulation of the draft Article 1 and article 2 of the United Nations Convention Against Transnational

Organized Crime 2000 above only shows one regulatory area in the realm of substance only. When referred to the legal system theory that the legal substance domain as one component of the legal system plays an equally important role as the other components. Domain the substance of this law can be mapped through a policy both in the context of legal reform and law reform that leads to the general objectives of the formation and development of state law. At this stage an important component is through a policy, which is a policy to formulate an asset seizure law which is part of a series of government policy mechanisms in the field of law enforcement relating to the rescue of assets or assets of the State that are transferred to another party due to a crime. Some criminal acts that are very close to saving assets are corruption and money laundering. The establishment of an asset rescue system in the two forms of criminal acts is intended because materially these two criminal acts contribute to a very large loss in the field of State and community assets, so that policy measures are needed especially through criminal law policies so that the activities of government officials to save assets they have their legitimacy.

2. Urgency the Formulation Criminal Law Into Asset Deprivation

The description above provides an argumentative picture of the making from a legislation policy in anticipating the development of crime and saving state and community losses from crime. By drafting and or drafting an asset seizure law. At present the draft law on appropriation of assets has been submitted to the government through the Ministry of Justice and Human Rights to be discussed more quickly by the government and legislative. According to Muzakir, the draft law on seizure of assets is strategic enough to eradicate money laundering in Indonesia. Besides that, the draft law on seizure of assets is useful in terms of recovering losses arising from criminal acts, therefore it must be formulated proportionally and still prioritize the element of justice. Muzakir's opinion above is reasonable, because at the moment the calculation of the State losses due to economic crimes has reached trillions of dollars. As the preliminary data can be reappeared that losses for money laundering, for example, even though it cannot be known with certainty, the amount of losses is very large.

Looking at the data of loss above in totality is so large that the actual assets of the State and society are lost in plain sight. The maximum efforts made by law enforcement officials will also depend very much on the legal instruments available to be used as a legal basis for action, bearing in mind that the other side also needs to be considered

namely the position, name, status and dignity of a person subject to seizure of their assets. However, the existence of conflicting interests of the State's law and individuals is not a reason for the State to withdraw its steps towards the exodus of assets resulting from crime to other places. The government through the ministries concerned with the support of the community and law enforcement officials need to synergistically accelerate the legalization of the draft asset seizure in order to accelerate the saving of state and community assets.

In addition from the above considerations the urgency of the need for a criminal law policy on seizure of assets according to Marfuatul Latifah[11], are: 1) Ratification of UNCAC; Development of types of criminal acts, and inadequate asset seizure mechanism. The position of Indonesia as the State of UNCAC ratification, so that the Indonesian government must adjust the provisions of existing legislation with the provisions in the convention because it is a consequence of the ratification. 2) Development of Criminal Acts for Economic Motives; In addition, another aspect that reflects Indonesia's need for the establishment of the Asset Seizure Act is the development of types of criminal acts of economic motives. Advances in technology have made it easier for the perpetrators to carry out criminal acts and conceal the proceeds of these crimes with easier methods. This must then be overcome by the existence of legal provisions in accordance with current and future conditions so that the seizure of assets can achieve maximum results. 3) Inadequate mechanism; The final factor of the urgency of establishing an asset seizure law is an inadequate mechanism. An adequate mechanism in the effort to seize assets is expected to use the mechanism contained in UNCAC so that the seizure of assets in Indonesia will run effectively.

The above opinion implies that in addition to considering the loss of the State and society, consideration of Indonesia's position as part of the world countries so it needs to support the international commitments that have been agreed in international organizations. Indonesia also plays a role and holds the responsibility of security and world order including security from the interruption of international crime. This reason is directly proportional to the fact that Indonesia can also be a place of escape for criminals and a place to hide assets of international crime assets, so that the synergy with other countries is needed to jointly prevent and act crimes of this kind.

[11] Latifah, Marfuatul. (2015). *Urgensi Pembentukan Undang-Undang Perampasan Aset Hasil Tindak Pidana Di Indonesia*. Jurnal Negara Hukum Volume 6 Nomor 1 Juni 2015. h. 26-29.

3. Expropriation of Assets by Criminal Acts resulting the perspective From Human Rights and Conviction Construction

Asset seizure is one of the ways that is tried to be formulated in the legislation as part of the government's criminal politics to fight crime, primarily confiscating the assets of the perpetrators of crime. In criminal law, the confiscation of assets can be categorized as a forced state action against the assets of the perpetrators of crime and become part of the criminal system in Indonesia. The act of seizing assets can be seen as a criminal remedy which is *Ultimum Remedium*. This meaning refers to criminal law because sanctions in criminal law are the last way, which is considered effective in deterring criminals and the wider community due to their harsh nature because, forcing and attacking individual and community rights including very basic human rights, such as the right to life . Although criminal law presents a hard and cruel side, it is intended as a guarantee of community protection from the dangers and threats of criminal acts by others. This means that in addition to being harsh, criminal law also contains its benefits or uses.

According to Bassiouni[12], the goals to be achieved by the criminal in general are manifested in social interests that contain certain values that need to be protected. If it is constructed in Bassiouni's opinion above, it appears that the appropriation of assets is an action aimed at protecting social interests. Social protection in this context is a long and gradual range of short-term goals in criminal law, that is to improve, socialize and rehabilitate perpetrators, while pursuing a medium-term goal of reducing the rate of crime growth, in the sense of suppressing or limiting the growth of crime.

Achievement of the above objectives according to Jeremy Bentham in its realization must remain in the corridor of respect for the rights of the perpetrators of crimes, ie not because they only look at the goals and then deny and use the criminal law carelessly. According to him that criminal law should not be used if ‘groundless, needless, unprofitable or inefficacious[13]. Bentham's opinion acknowledges the usefulness or importance of criminal law in guaranteeing community protection, but will be counterproductive if used recklessly and inefficiently.

[12] Barda, Nawawi Arief. (1996). *Bunga Rampai Kebijakan Hukum Pidana*. Bandung : Citra Aditya Bakti. h. 39.

[13] *Ibid.*

If criminal law is used haphazardly, according to Hulsman criminal law is felt as something inhumane, justice can fade if it is achieved through the implementation of criminal law, so that penalties must be abolished, and replaced with social work law. In current reality several weaknesses as Hulsman's opinion above have the support of theory and can explain the current position of criminal law. The retributive nature of criminal law carried out in formal legal mechanisms cannot guarantee the achievement of justice for the community so that the community seeks a solution that is more in line with the wishes of the community and guarantees the creation of substantial justice among the people.

Judging from the purpose of punishment theoretically, there are 2 (two) main objectives of criminal giving which rely on the existence ideologies or streams of crimes, namely Classical, and Modern Flow. According to Herbert L. Packer[14], that punishment appears 2 (two) conceptual views, each of which has different moral implications from one another. The two views are retributive views and utilitarian views. The Utilitarian view is a view which states that the criminal has further positive goals (teleological theories)[15]. The same thing was stated by Rupert Cross[16], in his view the development of the theory of punishment lies in the basis of the theory of usefulness to be useful (utilitarian) and the theory of retribution (retributive). Further said, the focal point of the theory of expediency is aimed at efforts to prevent crime in the future which consists of 3 (three) types of parts, namely: "prevention, deterence and longterm deterence, and reform". While the focal point of the theory of retaliation is aimed at the obligation to fulfill the rewards of the deeds committed by the criminal involved, and consists of 3 (three) kinds of parts, namely "vindication, fairness and proportionality". The utilitarian view sees precisely from the usefulness or usefulness of the criminal itself. In a utilitarian view, a crime is imposed because of the belief, the usefulness of the crime. Criminal punishment is not just for retaliation but for further benefits. Criminal retributive views are rewards that must be accepted by people who commit deviant behavior in society. This retributive view stems from the determinist's notion that everyone is free to have the will and to do the action according to his will. Such understanding, then the retributive view assumes that everyone must also be held accountable for their actions.

[14] Eddy O.S., Hiariej. (2003). *Prinsip-Prinsip Hukum Pidana Edisi Revisi.* Yogyakarta : Cahaya Atma Pustaka, h. 28-34.

[15] Muladi. (2008). *Lembaga Pidana Bersyarat*, Bandung : Alumni, h. 48.

[16] Bambang, Purnomo. (1986). *Pelaksanaan Pidana Penjara dengan Sistem Pemasyarakatan*, Yogyakarta : Liberty, Yogyakarta. h. 57.

In addition to the 2 (two) utilitarian and retributive views that has described above, in the paradigm of punishment there also appears an integrative paradigm. This view accumulates the two views above into one understanding. The integrative paradigm outlines that crime does not only have a purpose for retaliation as the concept put forward by a retributive view. However, it is also not solely oriented to the improvement of future actors by ignoring their actions.

The integrative view suggests that crime has a pluralistic purpose. One side of the criminal is intended as retaliation, the criminal imposed must be balanced with the act, may not be imposed more than, on the other hand the criminal also aims for prevention.

Criminal as a punishment has a purpose that develops from time to time. Criminalization is part of the implementation of the criminal justice system, after going through the judicial process. The term *"punishment*" is often referred to as *"punished*" and *"punishment*" which is derived from the Dutch words "*straf"* and "*wordt gestraf*"[17]. criminal use in criminal law has a specific purpose in combating crime, according to Karl O[18]. Christiansen, that criminal objectives in the form of "general prevention" can consist of various names (forms / embodiments), including reinforcing moral values (reinforcement of moral values), strengthening collective awareness (strengthening the collective conscience), reviving a feeling of unsteady solidarity (revival of the shaken feeling of solidarity).

In line with that Muladi stated: criminal punishment for the perpetrators of crime is[19]: a dynamic process that includes continuous and careful assessment of the objectives to be achieved and the consequences that can be selected from certain decisions on certain things at a time . This fosters the idea that gathering materials in this problem will support the solution of the problem in the best way possible. Muladi provides a description of the purpose of punishment with sociological, ideological and juridical philosophical approaches based on the basic assumption, that criminal acts constitute a disturbance to the balance, harmony and harmony in public life that results in individual or community damage, so that the purpose of punishment is directed to repair individual damage and social (individual and social damages)

[17] Moelyatno stated that the term punishment was a conventional term, and Moelyatno disagreed with the term, and used the term "criminal" instead of the word "straf" and "threatened criminal" to replace the word "gesture word". Moeljatno dalam Muladi dan Barda Nawawi Arief. (1998). *Teori-teori dan Kebijakan Pidana.* Bandung : Alumni. h. 1.

[18] Barda, Nawawi Arief. (2011). *Tujuan dan Pedoman Pemidanaan; Perspektif Pembaharuan dan Perbandingan Pidana*. Semarang : Pustaka Magister. h.33

[19] Muladi. (2002). *Kapita Selekta Hukum Sistem Peradilan Pidana*. Semarang : Badan Penerbitan Universitas Diponegoro. h. 53.

caused by a crime. The objectives of the criminal law are: (1) prevention (general and specific); (2) community protection; (3) maintaining community solidarity; (4) rewarded / balancing[20].

Even though criminal law is used as a last resort with a variety of purposes, it is implied that criminal law has a goal of preventing, protecting the community, building social solidarity to rewarding the crimes committed. The description of criminal and criminal sanction above, reinforces the argument that actually behind the rigors of criminal law sanctions contained the intention of protecting human rights, both to the community and individuals, as well as to the perpetrators themselves.

Protection of society is essentially the protection of human rights, including the rights of individuals, community groups to the State. Human Rights (HR) are basic human rights in nature and are universal. Such human rights include the right to life, religious rights; the right to independence, the right to self-development, the right to justice, the right to communicate, the right to security, the right to self-determination, the right to welfare; nationalism, internal security and international security that must not be eliminated in the life of the nation and state.

Crimes, including crimes related to the seizure of real assets, also violate the individual, community and state human rights of security, order and recognition of ownership. The criminal law policy of appropriation of criminal assets is closely related to the human rights of the perpetrators of crime. The constitutional basis of recognition and protection of human rights referred to can be found in the body of the 1945 Constitution of the Republic of Indonesia in Article 28 D and Article 28 H. Article 28 D Paragraph (1) formulates that the right to recognition, guarantee protection and fair legal certainty and equal treatment before the law. Whereas Article Paragraph (4) formulates that the right to private property which cannot be taken arbitrarily by anyone..

The protection and fulfillment of human rights for the people of Indonesia is the responsibility of the State. Article 28I (4) of the 1945 Constitution of the Republic of Indonesia states that: Protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government. Article 28I (5) states that In order to uphold and protect human rights in accordance with the principles of a democratic rule of

[20] *Ibid,* h. 61.

law, the implementation of human rights is guaranteed, regulated, and stated in statutory regulations.

Even though it seems that at a glance, asset confiscation will be very contradictory to the rights of someone suspected of committing a crime, but mutatis mutandis the asset deprivation policy also has a ratio that someone suspected of being a criminal offense is also attacking the interests of the State and or the community. Therefore it is important to look for and study in comparison between the position of individual actors with the interests of individuals, society or the state in a monotrialistic concept. In other words it is important to consider the position of the individual human rights of the individual and the rights of individuals, society and the State. The monotrialistic concept in criminal law is based on the consideration that there must be a balance between the interests of the *dader* (perpetrator), *victim* (victim) and *daad* (act) by considering the consequences or losses incurred as a result of a criminal act.

D. Conclusions

1. The development of crime in the global era increasingly clarifies the character of new dimension of crime. The characteristics of crime in this digital era are marked by the shorter mileage of crime that affects the *locus* and *tempu*s of crime, changes in modus operational that is sopihsticated which has expands and accelerates the flow of crime information and communication as well as the circulation of money resulting from crime that is not tracked through the banking system. The use of world crime technology is now adjusting to the characteristics of the development of globalization with the supranational economic power icon that has been dominated by technology in the digital age, so that it reaps many financial and social benefits. The predicting potential threats and losses, as well as anticipating this, United Nations in Article 53 of the UNCAC designed to ensure that each State Party recognizes the other State Party has the same legal standing in carrying out civil actions and other direct ways to recover property (assets) that obtained illegally and was taken abroad. The UN recommends a model of returning assets Non-Conviction Based Asset Forfeiture (NCB) / seizure of assets resulting from crime without going through punishment.
2. Currently Indonesia has adopted a policy to formulate regulations as the legal basis for seizure of Aseet, as a consequence of the ratification of the United Nations Convention on the Eradication of Funding Terrorism and the Convention Against Corruption. The

return of assets resulting from crime, is currently one of the government's targets or targets to take back all state rights that can be valued in money and everything in the form of money or goods owned by other parties due to crime. The crime of money laundering and corruption is one of the crimes that cause huge losses, so the State needs to take steps to recover the assets of the State and reuse them for development purposes.

3. The urgency of conducting an asset deprivation formulation policy can be inventoryed as follows :
   a. The existence of the global globalization movement, the development of science and technology have an influence on the characteristics of crime in the global era, in the field of business crime, in the fields of finance, banking, trade and information which are controlled by international / transnational crime organizations.
   b. Economic globalization also encourages changes in the world economic climate that has an impact on the movement of money or the flow of money from legal and illegal international businesses so quickly that it is easier for perpetrators to hide the proceeds of crime to places that are unreachable and untraceable by the State's financial and security system. .
   c. Some criminal acts, such as money laundering, narcotics and corruption, are the criminal offenses that have recorded the most losses to the State, society and individuals, so the State needs to take policies and strategic steps to save the State losses through the method of appropriation of assets of criminal acts.
   d. So far, the confiscation of assets in the Indonesian legal system can be done after the process of law enforcement obtains a court decision with a permanent power. However, in practice this mechanism cannot run optimally due to the length of time needed in the judicial process until the permanent legal persistence, so that this opportunity can be utilized by the perpetrators of criminal acts to hide or bring assets outside the State so that they are not tracked.
   e. Indonesia has ratified the United Nations Convention Against Corruption in 2003 and the eradication of the Financial Action Task Force (FATF) Revised 40+9 Recommendations also outlines the importance of appropriation of assets without conviction.
   f. In the implementation of the Anti-Corruption Act and the Money Laundering Law which regulates the possibility of confiscation and confiscation of assets can not be optimally enforced, because the confiscation of assets can only be done after the perpetrators proven in court are guilty of criminal acts.

g. Judging from the type of crime, confiscation of assets in existing legislation empirically is considered not effective enough to reduce the crime rate because the mechanism is only emphasized on the punishment of the perpetrators by placing the perpetrators in prison while confiscation and confiscation of assets are only carried out as additional crimes.

h. The type of criminal in the existing legislation needs to be developed with an economic motivated type, considering the quality and quantity of criminal acts in the financial sector is very detrimental to the country's finances and in certain circumstances can interfere with the stability of the country's economy. So that the development of criminal type also follows or adjusts to the characteristics of crime, which does not only include the death penalty, imprisonment, confinement and fines, but includes the appropriation of assets through both criminal and non-criminal mechanisms.

4. The formulation of a criminal law for seizure of assets can be carried out using the concept of a criminal law formulation policy either through criminal justice channels or outside the criminal justice mechanism. Therefore, it is important to build a policy framework in the format of substance as the basis for norms of appropriation of assets and the basis of actions of the apparatus, structure as an area of institutional authority in enforcing asset seizure, mechanisms built to support the application of management elements: cooperation, coordination, integration, synchronization, and simplification and a work ethic that is cultured and upholds human rights.
5. The appropriation of assets will be very contradictory to the rights of someone suspected of committing a crime, but mutatis mutandis the policy of appropriation of assets also has a ratio that a person suspected of being a criminal act is also attacking the interests of the State and or the community. Therefore it is important to look for and study in comparison between the position of individual actors with the interests of individuals, society or the state in a monotrialistic concept. The monotrialistic concept in criminal law is based on the consideration that there must be a balance between the interests of the *dader* (perpetrator), *victim* (victim) and *daad* (act) by considering the consequences or losses incurred as a result of a criminal act.

REFRENCE

BUKU-BUKU

Atmasasmita, Romli. (2014). *Hukum Kejahatan Bisnis, Teori dan Praktik di Era Globalisasi*. Jakarta : Prenadamedia Group.

Arief, Barda Nawawi. (2008). *Bunga Rampai Kebijakan Hukum Pidana (Perkembanan Penyusunan Konsep KUHP Baru)*. Jakarta : Kencana Prenada Media Group.

Friedman, Lawrence M. (1975). *The Legal System: A Social Science Perspective*. New York : Russell Sage Foundation.

Hiariej, Eddy O.S.. (2016). *Prinsip-Prinsip Hukum Pidana*, Edisi Revisi. Yogyakarta: Cahaya Atma Pustaka.

Muladi. 2002. *Kapita Selekta Hukum Sistem Peradilan Pidana*. Semarang: Badan Penerbitan Universitas Diponegoro.

---------. (2008). *Lembaga Pidana Bersyarat*. Bandung : Alumni.

---------. dan Barda Nawawi Arief. (1998). *Teori-teori dan Kebijakan Pidana.Bandung :* Alumni.

Sianturi, S.R. dan Mompang L. Panggabean. (1996). *Hukum Penetensier di Indonesia*. Jakarta : Ahaem-Petehaem.

Soekanto, Soerjono dan Sri Mamudji. (2003). *Penelitian Hukum Normatif*. Jakarta : RajaGrafindo.

INTERNET

Dwi A., Dyah. ICW : Korupsi 2015 Rugikan Negara Rp 31077 Trilyun, http://www.antaranews.com/berita/546929/icw-korupsi-2015-rugikan-negara-rp31077-triliun accessed on Wednesday 24 February 2016.

Kerugian Negara Akibat Pencucian Uang, http://www.interpol.go.id/id/kejahatan-transnasional/pencucian-uang/97-kerugian-negara-akibat-pencucian-uang accessed on Wednesday 2 January 2013.